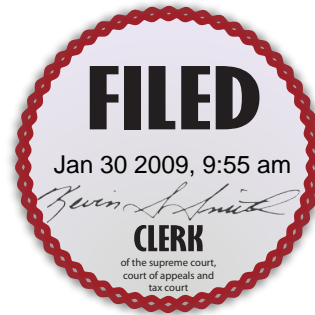


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LUIS M. ESHEBARRIA-SANTIAGO,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A05-0804-CR-232

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0612-FB-134

January 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Luis M. Eshebarria-Santiago (“Santiago”) appeals his conviction for Dealing in Cocaine, as a Class B felony,¹ contending that the evidence was not sufficient to rebut his alibi defense. We affirm.

Facts and Procedural History

On the afternoon of December 19, 2006, members of the Hammond Police Department arranged a controlled drug purchase with the assistance of a confidential informant named Robert Bobby. Prior to the arranged buy, the officers searched Bobby and his car, provided him with a twenty dollar bill that had been photocopied, and followed Bobby’s car to Santiago’s house. One officer was riding in Bobby’s car. Officers had set up surveillance of the house and outfitted Bobby with an audio transmitter so the officers could listen to the transaction as it occurred.

Upon arrival at Santiago’s house, Bobby parked his car on the street and walked to the front door. When Santiago’s son George answered the door and let Bobby into the house, Bobby handed George the provided money and asked for “twenty of white.” After George went into a bedroom and returned, he told Bobby that his father was “making me a special bag.” Trial transcript at 150. Subsequently, Santiago exited the same bedroom and handed a baggie of cocaine to Bobby. Bobby then returned to his car and handed the cocaine to the police officer. Bobby returned to the police station with the officers and subsequently

¹ Ind. Code § 35-48-4-1(a)(1)(C).

identified Santiago from a photographic array as the person who had handed him the cocaine.

The next day the Hammond Police executed a search warrant of Santiago's house. Santiago was found sitting alone on a bed in the bedroom with marijuana, baggies, scissors and an air gun on the bed. The police also recovered digital scales, hand-held balance scales, Inositol,² a small amount of cocaine residue located on a plate in the bedroom and \$3,439 in cash. The photocopied twenty dollar bill was among the cash.

The State charged Santiago with Dealing in Cocaine, as a Class B felony, Dealing in Marijuana, as a Class D felony,³ and Possession of Cocaine, as a Class D felony.⁴ At trial, Edith Lecea testified that Santiago had been at her home on December 19, 2006, between 10 a.m. and 10 p.m. At the conclusion of the jury trial, Santiago was found guilty as charged, and the trial court sentenced him to eight years for Dealing in Cocaine, one year for Dealing in Marijuana and one year for Possession of Cocaine, all to be served concurrently.

Discussion and Decision

Santiago argues that there is insufficient evidence to rebut his alibi defense. In addressing a claim of insufficient evidence, we do not reweigh the evidence nor do we reevaluate the credibility of witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom and will affirm the conviction if there is substantial evidence of probative value

² Inositol is a substance frequently used as a cutting agent for cocaine.

³ Ind. Code § 35-48-4-10.

⁴ Ind. Code § 35-48-4-6(a).

from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. Rather than directly rebutting a defendant's alibi, the State may disprove the alibi by proving its own case-in-chief beyond a reasonable doubt. Carr v. State, 728 N.E.2d 125, 130 (Ind. 2000). "A jury may choose to disbelieve alibi witnesses if the State's evidence renders such disbelief reasonable." Id.

Santiago offered the testimony of Lecea, the mother of a friend of Santiago's daughter. Lecea testified that Santiago was at her home between 10 a.m. and 10 p.m. on December 19, 2006, working on her van. According to Lecea, they traveled to a junkyard in Gary to look for a new radiator and purchased one before returning to Lecea's home. Lecea said that she received a receipt for the radiator purchase but did not bring it to trial. Lecea also testified that she first found out about Santiago's trial, by way of her daughter, the day before she testified, yet Santiago's defense counsel filed a notice of alibi, specifically naming Lecea, days before her testimony. Furthermore, Lecea does not speak Spanish, and Santiago does not speak English.

Lecea's testimony that Santiago was at her house for the majority of the day in question and the testimony of Bobby that Santiago handed him the cocaine at Santiago's house are in direct conflict as to Santiago's location on December 19, 2006. It was the jury's exclusive prerogative to weigh this conflicting evidence. See Carr, 728 N.E.2d at 130. There is sufficient evidence to support the jury's rejections of Santiago's alibi and its conclusion that Santiago dealt cocaine to Bobby.

Affirmed.

MATHIAS, J., and BARNES, J., concur.